

A bill for an act

relating to human services; making changes to continuing care policy and technical provisions; amending Minnesota Statutes 2008, sections 245A.03, by adding a subdivision; 626.557, subdivision 9a; Minnesota Statutes 2009 Supplement, sections 144.0724, subdivision 11; 256B.0625, subdivision 19c; 256B.0651, by adding a subdivision; 256B.0652, subdivision 6; 256B.0659, subdivisions 4, 10, 11, 13, 21, 30, by adding a subdivision; 256B.0911, subdivision 2b.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 144.0724, subdivision 11, is amended to read:

Subd. 11. **Nursing facility level of care.** (a) For purposes of medical assistance payment of long-term care services, a recipient must be determined, using assessments defined in subdivision 4, to meet one of the following nursing facility level of care criteria:

(1) the person requires formal clinical monitoring at least once per day;

~~(1)~~ (2) the person needs the assistance of another person or constant supervision to begin and complete at least four of the following activities of living: bathing, bed mobility, dressing, eating, grooming, toileting, transferring, and walking;

~~(2)~~ (3) the person needs the assistance of another person or constant supervision to begin and complete toileting, transferring, or positioning and the assistance cannot be scheduled;

~~(3)~~ (4) the person has significant difficulty with memory, using information, daily decision making, or behavioral needs that require intervention;

~~(4)~~ (5) the person has had a qualifying nursing facility stay of at least 90 days;

(6) the person meets the nursing facility level of care criteria determined 30 days after admission or on the first quarterly assessment after admission, whichever is later; or

~~(5)~~ (7) the person is determined to be at risk for nursing facility admission or readmission through a face-to-face long-term care consultation assessment as specified in section 256B.0911, subdivision 3a, 3b, or 4d, by a county, tribe, or managed care organization under contract with the Department of Human Services. The person is considered at risk under this clause if the person currently lives alone or will live alone upon discharge and also meets one of the following criteria:

- (i) the person has experienced a fall resulting in a fracture;
- (ii) the person has been determined to be at risk of maltreatment or neglect, including self-neglect; or
- (iii) the person has a sensory impairment that substantially impacts functional ability and maintenance of a community residence.

(b) The assessment used to establish medical assistance payment for nursing facility services must be the most recent assessment performed under subdivision 4, paragraph (b), that occurred no more than 90 calendar days before the effective date of medical assistance eligibility for payment of long-term care services. In no case shall medical assistance payment for long-term care services occur prior to the date of the determination of nursing facility level of care.

(c) The assessment used to establish medical assistance payment for long-term care services provided under sections 256B.0915 and 256B.49 and alternative care payment for services provided under section 256B.0913 must be the most recent face-to-face assessment performed under section 256B.0911, subdivision 3a, 3b, or 4d, that occurred no more than 60 calendar days before the effective date of medical assistance eligibility for payment of long-term care services.

Sec. 2. Minnesota Statutes 2008, section 245A.03, is amended by adding a subdivision to read:

**Subd. 9. Permitted services by an individual who is related.** Notwithstanding subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a person receiving supported living services may provide licensed services to that person if:

(1) the person who receives supported living services received these services in a residential site on July 1, 2005;

(2) the services under clause (1) were provided in a corporate foster care setting for adults and were funded by the developmental disabilities home and community-based services waiver defined in section 256B.092;

(3) the individual who is related obtains and maintains both a license under chapter 245B and an adult foster care license under Minnesota Rules, parts 9555.5105 to 9555.6265; and

(4) the individual who is related is not the guardian of the person receiving supported living services.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 19c, is amended to read:

Subd. 19c. **Personal care.** Medical assistance covers personal care assistance services provided by an individual who is qualified to provide the services according to subdivision 19a and sections 256B.0651 to 256B.0656, provided in accordance with a plan, and supervised by a qualified professional.

"Qualified professional" means a mental health professional as defined in section 245.462, subdivision 18, or 245.4871, subdivision 27; or a registered nurse as defined in sections 148.171 to 148.285, a licensed social worker as defined in ~~section 148B.21~~ sections 148D.010 and 148D.055, or a qualified developmental disabilities specialist under section 245B.07, subdivision 4. The qualified professional shall perform the duties required in section 256B.0659.

Sec. 4. Minnesota Statutes 2009 Supplement, section 256B.0651, is amended by adding a subdivision to read:

Subd. 17. **Recipient protection.** (a) Providers of home care services must provide each recipient with a copy of the home care bill of rights under section 144A.44 at least 30 days prior to terminating services to a recipient, if the termination results from a payment withhold, a suspension of participation, or a termination of participation under section 256B.064. If a home care provider determines it is unable to continue providing services to a recipient because of an action under section 256B.064, the provider must notify the recipient, the recipient's responsible party, and the commissioner 30 days prior to terminating services to the recipient, and must assist the recipient in transitioning to another home care provider of the recipient's choice.

(b) In the event of a payment withhold from a home care provider or a suspension or termination of participation of a home care provider under section 256B.064, the commissioner may inform the Office of Ombudsman for Long-Term Care and the lead agencies for all recipients with active service agreements with the provider. At the

commissioner's request, the lead agencies must contact recipients to ensure that the recipients are continuing to receive needed care, and that the recipients have been given free choice of provider if they transfer to another home care provider. In addition, the commissioner or the commissioner's delegate may directly notify recipients who receive care from the provider that payments have been withheld or that the provider's participation in medical assistance has been suspended or terminated, if the commissioner determines that notification is necessary to protect the welfare of the recipients. For purposes of this subdivision, "lead agencies" means counties, tribes, and managed care organizations.

Sec. 5. Minnesota Statutes 2009 Supplement, section 256B.0652, subdivision 6, is amended to read:

Subd. 6. **Authorization; personal care assistance and qualified professional.**

(a) All personal care assistance services, supervision by a qualified professional, and additional services beyond the limits established in subdivision 11, must be authorized by the commissioner or the commissioner's designee before services begin except for the assessments established in subdivision 11 and section 256B.0911. The authorization for personal care assistance and qualified professional services under section 256B.0659 must be completed within 30 days after receiving a complete request.

(b) The amount of personal care assistance services authorized must be based on the recipient's home care rating. The home care rating shall be determined by the commissioner or the commissioner's designee based on information submitted to the commissioner identifying the following:

(1) total number of dependencies of activities of daily living as defined in section 256B.0659;

(2) ~~number~~ presence of complex health-related needs as defined in section 256B.0659; and

(3) ~~number~~ presence of behavior ~~descriptions~~ as defined in section 256B.0659.

(c) The methodology to determine total time for personal care assistance services for each home care rating is based on the median paid units per day for each home care rating from fiscal year 2007 data for the personal care assistance program. Each home care rating has a base level of hours assigned. Additional time is added through the assessment and identification of the following:

(1) 30 additional minutes per day for a dependency in each critical activity of daily living as defined in section 256B.0659;

(2) 30 additional minutes per day for each complex health-related function as defined in section 256B.0659; and

(3) 30 additional minutes per day for each behavior issue as defined in section 256B.0659.

(d) A limit of 96 units of qualified professional supervision may be authorized for each recipient receiving personal care assistance services. A request to the commissioner to exceed this total in a calendar year must be requested by the personal care provider agency on a form approved by the commissioner.

Sec. 6. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 4, is amended to read:

Subd. 4. **Assessment for personal care assistance services; limitations.** (a) An assessment as defined in subdivision 3a must be completed for personal care assistance services.

(b) The following limitations apply to the assessment:

(1) a person must be assessed as dependent in an activity of daily living based on the person's need, on a daily basis, for:

(i) cuing and constant supervision to complete the task; or

(ii) hands-on assistance to complete the task; and

(2) a child may not be found to be dependent in an activity of daily living if because of the child's age an adult would either perform the activity for the child or assist the child with the activity. Assistance needed is the assistance appropriate for a typical child of the same age.

(c) Assessment for complex health-related needs must meet the criteria in this paragraph. During the assessment process, a recipient qualifies as having complex health-related needs if the recipient has one or more of the interventions that are ordered by a physician, specified in a personal care assistance care plan, and found in the following:

(1) tube feedings requiring:

(i) a ~~gastro/jejunostomy~~ gastrojejunostomy tube; or

(ii) continuous tube feeding lasting longer than 12 hours per day;

(2) wounds described as:

(i) stage III or stage IV;

(ii) multiple wounds;

(iii) requiring sterile or clean dressing changes or a wound vac; or

(iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require specialized care;

(3) parenteral therapy described as:

- 6.1 (i) IV therapy more than two times per week lasting longer than four hours for
- 6.2 each treatment; or
- 6.3 (ii) total parenteral nutrition (TPN) daily;
- 6.4 (4) respiratory interventions including:
- 6.5 (i) oxygen required more than eight hours per day;
- 6.6 (ii) respiratory vest more than one time per day;
- 6.7 (iii) bronchial drainage treatments more than two times per day;
- 6.8 (iv) sterile or clean suctioning more than six times per day;
- 6.9 (v) dependence on another to apply respiratory ventilation augmentation devices
- 6.10 such as BiPAP and CPAP; and
- 6.11 (vi) ventilator dependence under section 256B.0652;
- 6.12 (5) insertion and maintenance of catheter including:
- 6.13 (i) sterile catheter changes more than one time per month;
- 6.14 (ii) clean self-catheterization more than six times per day; or
- 6.15 (iii) bladder irrigations;
- 6.16 (6) bowel program more than two times per week requiring more than 30 minutes to
- 6.17 perform each time;
- 6.18 (7) neurological intervention including:
- 6.19 (i) seizures more than two times per week and requiring significant physical
- 6.20 assistance to maintain safety; or
- 6.21 (ii) swallowing disorders diagnosed by a physician and requiring specialized
- 6.22 assistance from another on a daily basis; and
- 6.23 (8) other congenital or acquired diseases creating a need for significantly increased
- 6.24 direct hands-on assistance and interventions in six to eight activities of daily living.
- 6.25 (d) An assessment of behaviors must meet the criteria in this paragraph. A recipient
- 6.26 qualifies as having a need for assistance due to behaviors if the recipient's behavior requires
- 6.27 assistance at least four times per week and shows one or more of the following behaviors:
- 6.28 (1) physical aggression towards self or others, or destruction of property that requires
- 6.29 the immediate response of another person;
- 6.30 (2) increased vulnerability due to cognitive deficits or socially inappropriate
- 6.31 behavior; or
- 6.32 (3) verbally aggressive and resistive to care.

6.33 Sec. 7. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 10,

6.34 is amended to read:

Subd. 10. **Responsible party; duties; delegation.** (a) A responsible party shall enter into a written agreement with a personal care assistance provider agency, on a form determined by the commissioner, to perform the following duties:

(1) be available while care is provided in a method agreed upon by the individual or the individual's legal representative and documented in the recipient's personal care assistance care plan;

(2) monitor personal care assistance services to ensure the recipient's personal care assistance care plan is being followed; and

(3) review and sign personal care assistance time sheets after services are provided to provide verification of the personal care assistance services.

Failure to provide the support required by the recipient must result in a referral to the county common entry point.

(b) Responsible parties who are parents of minors or guardians of minors or incapacitated persons may delegate the responsibility to another adult who is not the personal care assistant during a temporary absence of at least 24 hours but not more than six months. The person delegated as a responsible party must be able to meet the definition of the responsible party. The responsible party must ensure that the delegate performs the functions of the responsible party, is identified at the time of the assessment, and is listed on the personal care assistance care plan. The responsible party must communicate to the personal care assistance provider agency about the need for a ~~delegate~~ delegated responsible party, including the name of the delegated responsible party, ~~dates~~ the delegated responsible party will be living with the recipient, and contact numbers.

Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11, is amended to read:

Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant must meet the following requirements:

(1) be at least 18 years of age with the exception of persons who are 16 or 17 years of age with these additional requirements:

(i) supervision by a qualified professional every 60 days; and

(ii) employment by only one personal care assistance provider agency responsible for compliance with current labor laws;

(2) be employed by a personal care assistance provider agency;

(3) enroll with the department as a personal care assistant after clearing a background study. Except as provided in subdivision 11a, before a personal care assistant provides services, the personal care assistance provider agency must initiate a background study on

the personal care assistant under chapter 245C, and the personal care assistance provider agency must have received a notice from the commissioner that the personal care assistant is:

- (i) not disqualified under section 245C.14; or
- (ii) is disqualified, but the personal care assistant has received a set aside of the disqualification under section 245C.22;
- (4) be able to effectively communicate with the recipient and personal care assistance provider agency;
- (5) be able to provide covered personal care assistance services according to the recipient's personal care assistance care plan, respond appropriately to recipient needs, and report changes in the recipient's condition to the supervising qualified professional or physician;
- (6) not be a consumer of personal care assistance services;
- (7) maintain daily written records including, but not limited to, time sheets under subdivision 12;
- (8) effective January 1, 2010, complete standardized training as determined by the commissioner before completing enrollment. Personal care assistant training must include successful completion of the following training components: basic first aid, vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of personal care assistants including information about assistance with lifting and transfers for recipients, emergency preparedness, orientation to positive behavioral practices, fraud issues, and completion of time sheets. Upon completion of the training components, the personal care assistant must demonstrate the competency to provide assistance to recipients;
- (9) complete training and orientation on the needs of the recipient within the first seven days after the services begin; and
- (10) be limited to providing and being paid for up to 310 hours per month of personal care assistance services regardless of the number of recipients being served or the number of personal care assistance provider agencies enrolled with.

(b) A legal guardian may be a personal care assistant if the guardian is not being paid for the guardian services and meets the criteria for personal care assistants in paragraph (a).

(c) Effective January 1, 2010, persons who do not qualify as a personal care assistant include parents and stepparents of minors, spouses, paid legal guardians, family foster care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or staff of a residential setting.

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.



Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0659, is amended by adding a subdivision to read:

Subd. 11a. **Exception to personal care assistant; requirements.** The personal care assistant for a recipient may be allowed to enroll with a different personal care assistant provider agency upon initiation of a new background study according to chapter 245C, if all of the following are met:

(1) the commissioner determines that a change in enrollment or affiliation of the personal care assistant is needed in order to assure continuity of services and protect the health and safety of the recipient;

(2) the chosen agency has been continuously enrolled as a personal care assistance provider agency for at least two years;

(3) the recipient chooses to transfer to the personal care assistance provider agency;

(4) the personal care assistant has been continuously enrolled with the former personal care assistance provider agency since the last background study was completed; and

(5) the personal care assistant continues to meet requirements of subdivision 11, excluding paragraph (a), clause (3).

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13, is amended to read:

Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional must ~~be employed by~~ work for a personal care assistance provider agency and meet the definition under section 256B.0625, subdivision 19c. Before a qualified professional provides services, the personal care assistance provider agency must initiate a background study on the qualified professional under chapter 245C, and the personal care assistance provider agency must have received a notice from the commissioner that the qualified professional:

(1) is not disqualified under section 245C.14; or

(2) is disqualified, but the qualified professional has received a set aside of the disqualification under section 245C.22.

(b) The qualified professional shall perform the duties of training, supervision, and evaluation of the personal care assistance staff and evaluation of the effectiveness of personal care assistance services. The qualified professional shall:

(1) develop and monitor with the recipient a personal care assistance care plan based on the service plan and individualized needs of the recipient;

(2) develop and monitor with the recipient a monthly plan for the use of personal care assistance services;

(3) review documentation of personal care assistance services provided;

(4) provide training and ensure competency for the personal care assistant in the individual needs of the recipient; and

(5) document all training, communication, evaluations, and needed actions to improve performance of the personal care assistants.

(c) Effective January 1, 2010, the qualified professional shall complete the provider training with basic information about the personal care assistance program approved by the commissioner within six months of the date hired by a personal care assistance provider agency. Qualified professionals who have completed the required ~~trainings~~ training as ~~an employee with a worker from~~ a personal care assistance provider agency do not need to repeat the required ~~trainings~~ training if they are hired by another agency, if they have completed the training within the last three years.

Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21, is amended to read:

Subd. 21. **Requirements for initial enrollment of personal care assistance provider agencies.** (a) All personal care assistance provider agencies must provide, at the time of enrollment as a personal care assistance provider agency in a format determined by the commissioner, information and documentation that includes, but is not limited to, the following:

(1) the personal care assistance provider agency's current contact information including address, telephone number, and e-mail address;

(2) proof of surety bond coverage in the amount of \$50,000 or ten percent of the provider's payments from Medicaid in the previous year, whichever is less;

(3) proof of fidelity bond coverage in the amount of \$20,000;

(4) proof of workers' compensation insurance coverage;

(5) proof of liability insurance;

~~(5)~~ (6) a description of the personal care assistance provider agency's organization identifying the names of all owners, managing employees, staff, board of directors, and the affiliations of the directors, owners, or staff to other service providers;

~~(6)~~ (7) a copy of the personal care assistance provider agency's written policies and procedures including: hiring of employees; training requirements; service delivery; and employee and consumer safety including process for notification and resolution

11.1 of consumer grievances, identification and prevention of communicable diseases, and  
11.2 employee misconduct;

11.3 ~~(7)~~ (8) copies of all other forms the personal care assistance provider agency uses in  
11.4 the course of daily business including, but not limited to:

11.5 (i) a copy of the personal care assistance provider agency's time sheet if the time  
11.6 sheet varies from the standard time sheet for personal care assistance services approved  
11.7 by the commissioner, and a letter requesting approval of the personal care assistance  
11.8 provider agency's nonstandard time sheet;

11.9 (ii) the personal care assistance provider agency's template for the personal care  
11.10 assistance care plan; and

11.11 (iii) the personal care assistance provider agency's template for the written  
11.12 agreement in subdivision 20 for recipients using the personal care assistance choice  
11.13 option, if applicable;

11.14 ~~(8)~~ (9) a list of all ~~trainings~~ training and classes that the personal care assistance  
11.15 provider agency requires of its staff providing personal care assistance services;

11.16 ~~(9)~~ (10) documentation that the personal care assistance provider agency and staff  
11.17 have successfully completed all the training required by this section;

11.18 ~~(10)~~ (11) documentation of the agency's marketing practices;

11.19 ~~(11)~~ (12) disclosure of ownership, leasing, or management of all residential  
11.20 properties that is used or could be used for providing home care services; and

11.21 ~~(12)~~ (13) documentation that the agency will use the following percentages of  
11.22 revenue generated from the medical assistance rate paid for personal care assistance  
11.23 services for employee personal care assistant wages and benefits: 72.5 percent of revenue  
11.24 in the personal care assistance choice option and 72.5 percent of revenue from other  
11.25 personal care assistance providers.

11.26 (b) Personal care assistance provider agencies shall provide the information specified  
11.27 in paragraph (a) to the commissioner at the time the personal care assistance provider  
11.28 agency enrolls as a vendor or upon request from the commissioner. The commissioner  
11.29 shall collect the information specified in paragraph (a) from all personal care assistance  
11.30 providers beginning July 1, 2009.

11.31 (c) All personal care assistance provider agencies shall complete mandatory training  
11.32 as determined by the commissioner before enrollment as a provider. Personal care  
11.33 assistance provider agencies are required to send all owners, qualified professionals  
11.34 employed by the agency, and all other managing employees to the initial and subsequent  
11.35 ~~trainings~~ training. Personal care assistance provider agency billing staff shall complete  
11.36 training about personal care assistance program financial management. This training is

12.1 effective July 1, 2009. Any personal care assistance provider agency enrolled before that  
12.2 date shall, if it has not already, complete the provider training within 18 months of July 1,  
12.3 2009. Any new owners, new qualified professionals, and new managing employees are  
12.4 required to complete mandatory training as a requisite of hiring.

12.5 Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,  
12.6 is amended to read:

12.7 Subd. 30. **Notice of service changes to recipients.** The commissioner must provide:

12.8 (1) by October 31, 2009, information to recipients likely to be affected that (i)  
12.9 describes the changes to the personal care assistance program that may result in the  
12.10 loss of access to personal care assistance services, and (ii) includes resources to obtain  
12.11 further information; and

12.12 (2) notice of changes in medical assistance ~~home care~~ personal care assistant  
12.13 services to each affected recipient at least 30 days before the effective date of the change  
12.14 for changes that occur on or after December 1, 2009, and prior to January 1, 2012.  
12.15 Effective January 1, 2012, a notice of at least ten days before the effective date of the  
12.16 change is required.

12.17 The notice shall include how to get further information on the changes, how to get help to  
12.18 obtain other services, a list of community resources, and appeal rights. Notwithstanding  
12.19 section 256.045, a recipient may request continued services pending appeal within the  
12.20 time period allowed to request an appeal.

12.21 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 2b,  
12.22 is amended to read:

12.23 Subd. 2b. **Certified assessors.** (a) Beginning January 1, 2011, each lead agency  
12.24 shall use certified assessors who have completed training and the certification processes  
12.25 determined by the commissioner in subdivision 2c. Certified assessors shall demonstrate  
12.26 best practices in assessment and support planning including person-centered planning  
12.27 principals and have a common set of skills that must ensure consistency and equitable  
12.28 access to services statewide. Assessors must be part of a multidisciplinary team of  
12.29 professionals that includes public health nurses, social workers, and other professionals  
12.30 as defined in paragraph (b). For persons with complex health care needs, a public health  
12.31 nurse or registered nurse from a multidisciplinary team must be consulted. A lead agency  
12.32 may choose in accordance with departmental policies to contract with a qualified, certified  
12.33 assessor to conduct assessments and reassessments on behalf of the lead agency.

(b) Certified assessors are persons with a minimum of a bachelor's degree in social work, nursing with a public health nursing certificate, or other closely related field with at least one year of home and community-based experience or a two-year registered nursing degree with at least three years of home and community-based experience that have received training and certification specific to assessment and consultation for long-term care services in the state.

Sec. 14. Minnesota Statutes 2008, section 626.557, subdivision 9a, is amended to read:

Subd. 9a. **Evaluation and referral of reports made to common entry point unit.**

The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

~~(3) if the report references alleged or suspected maltreatment and there is no immediate need for adult protective services, the common entry point shall notify~~ refer all reports of alleged or suspected maltreatment to the appropriate lead agency as soon as possible, but in any event no longer than two working days; and

~~(4) if the report does not reference alleged or suspected maltreatment, the common entry point may determine whether the information will be referred; and~~

~~(5)~~ (4) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Sec. 15. **ELDERLY WAIVER CONVERSION.**

Notwithstanding Minnesota Statutes, section 256B.0915, subdivision 3b, a person age 65 or older with an MT home care rating on January 1, 2010, is eligible for the elderly waiver program and shall be considered a conversion for purposes of accessing monthly budget caps equal to no more than their monthly spending under the personal care assistance program on January 1, 2010.